

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6488 of 1984

Date of decision: 15-8-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BRIJBHUSHANSINGH B SINGH BAIS

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner
Ms. Siddhi Talati for Respondent No. 1
SERVED for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:15-8-97

C.A.V. JUDGEMENT

The petitioner, a laboratory technician, working under the Director of Employees' State Insurance Scheme, Ahmedabad, filed this special civil application and prayed for direction to the respondents to give him seniority in the department concerned from the date of his initial appointment or in the alternative to repatriate him back to his parent department.

2. The facts, in brief, of the case are that the petitioner was appointed on 25th September, 1963 as laboratory technician at the M.P.Shah Medical College, Jamnagar under order of the Director of Health and Medical Services (Medical), Ahmedabad. The petitioner wanted to come to Ahmedabad and he made request for his transfer to Employees' State Insurance Scheme (ESI Scheme) at Ahmedabad on 3rd November, 1964. But that request came to be rejected on 16th November, 1964 by the Dean of M.B. Shah Medical College, Jamnagar. Under Government Resolution dated 3rd September, 1965 section of the ESI Scheme was separated from the Directorate of Health and Medical Services. Under order dated 1st October, 1965 the petitioner was transferred from Medical College, Jamnagar, to ESI Scheme, Ahmedabad, D-6 Dispensary. The petitioner, in pursuance of the said order, joined at Ahmedabad. Seniority list of laboratory technicians of ESI Scheme was circulated vide order dated 30th September, 1972 in which the petitioner was placed at serial No.27. This seniority has been assigned to the petitioner from the date on which he joined the ESI Scheme at Ahmedabad, i.e. 2nd November, 1965. So his previous service from 25th September, 1963 to 2nd November, 1965 was not considered for seniority. The petitioner made representation against the said provisional seniority list, but his claim was not accepted on the ground that as he had come to Ahmedabad at his own request his past service cannot be counted for seniority. In the seniority list of laboratory technicians which has been published by the Directorate of Health and Medical Services (Medical), name of the petitioner was shown at serial No.10. But later on his name has been ordered to be deleted from the said seniority list, under order dated 25th February, 1980. The petitioner preferred appeal to the Secretary, Health and Family Welfare Department, Sachivalaya, Gandhinagar. But he was not given any relief. Hence this special civil application before this Court.

3. Learned counsel for the petitioner contended that it is not the case where the petitioner has been transferred to ESI Scheme at Ahmedabad on his own

request, and as such denial of seniority to him from the date of initial entry in service is arbitrary. It has next been contended that in case the petitioner's claim for seniority from the date of appointment is not acceptable, then he should be repatriated back to the parent department. Lastly the counsel for the petitioner contended that the action of the respondents in deleting his name from the seniority list published by Directorate of Health and Medical Services (Medical), which is his parent Department, is illegal. On the other hand the counsel for the respondents contended that the order annexure-D dated 1st October, 1965 by which the petitioner has been transferred to E.S.I.Scheme is very specific and clear, and it was a case of transfer of the petitioner on his own request, which is certainly at the loss of seniority. So far as the claim of the petitioner for repatriation is concerned, the counsel for the respondents contended that once the petitioner has taken voluntary transfer to E.S.I. Scheme, at subsequent stage he could not have made request for repatriation, and if such request is accepted, then it would be transfer at his own request at loss of further seniority. In reply to the last contention of the learned counsel for the petitioner, the learned counsel for the respondent submitted that the petitioner sought transfer to E.S.I. Scheme long back and as such existence of his name in the seniority list of the parent department was only an error, which has been rectified.

4. I have given my thoughtful consideration to the contentions raised by the learned counsel for the parties. Annexure-D is the order of transfer of the petitioner to E.S.I.Scheme at Ahmedabad. There is specific recital, "transfer of above candidates involve change of head quarters. They are not entitled for T.A. or joining time as they are transferred at their own request". From the aforesaid recital there cannot be any doubt that it is a case of transfer of the petitioner on his own request. The petitioner has accepted this order and he has joined the E.S.I.Scheme at Ahmedabad. The petitioner has not raised any objection against this transfer order. The fact that the petitioner acted upon the said order gives out that he has accepted that it was a transfer at his own request. The petitioner has placed much emphasize on the fact that he has not given any writing for transfer. But this court cannot be oblivious of the fact that on 3rd November, 1964 the petitioner had made request for transfer to E.S.I. Scheme, Ahmedabad, and at that point of time the Dean of the Medical College had declined his request. But the request of the petitioner was there and on the basis of the said request

the petitioner has been transferred. Now, after about 19 years of the order dated 1st October, 1965 the petitioner cannot claim that the transfer was not at his own request. The petitioner is estopped from raising these issues when he was not given seniority from the date of entry in service. It is well settled law that in case an employee is transferred from one department to another which form a watertight compartment, then it is always at the loss of seniority. The petitioner wanted to come to Ahmedabad and he has accepted the transfer of his own volition. He enjoyed the transfer for all these years and now for claiming seniority he started raising objection which is certainly nothing but only afterthought. The demand of the petitioner for repatriation is equally a dishonest plea at this stage.

5. In the result this special civil application fails, and the same is dismissed. Rule discharged. No order as to costs. Interim relief any granted by Court stands vacated.

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